

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6618  
PETITION OF ROBIN RICE**

OPINION OF THE BOARD  
(Hearing Date: May 29, 2019)  
(Effective Date of Opinion: June 6, 2019)

Case No. A-6618 is an application by Robin Rice for two variances, one needed for an existing house and the second for an existing shed. The existing house requires a variance of 0.80 feet, as it is within 11.20 feet of the right lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2 of the Montgomery County Zoning Ordinance ("Zoning Ordinance"). The existing accessory structure (shed) requires a variance of eight (8) feet, as it is within four (4) feet of the left lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 29, 2019. Petitioner Robin Rice appeared in support of the petition with her husband, Don Ackad. Ms. Rice's abutting neighbors to the left, Tom Johnson, and to the right, Beverly Lloyd, also appeared at the hearing, as did Anne Gregorski, whose property is diagonally across Park Mill Drive from the subject property, to the southwest.

Decision of the Board:                      Requested Variance for existing house **GRANTED**.  
    Requested Variance for existing shed **DENIED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 8, Block G, Mill Creek Town Addition Subdivision, located at 17505 Park Mill Drive, Rockville, MD, 20855 in the R-200 Zone. The property is a rectangular through lot, 15,000 square feet in size, with frontage on both Park Mill Drive and Shady Grove Road. See Exhibits 3 and 4(a).
2. The Justification Statement ("Statement") states that the home on the subject property was constructed in 1964, and that the Petitioner did not purchase the property until 2016. With respect to the variance needed for the existing house, the Statement notes that in 1982, the County issued a building permit for the construction of an addition

on the subject property where a carport had previously been located, and that following completion of the construction, that permit was finalized. The Statement indicates that the Petitioner had a new survey of the property done in 2016, and that the new survey indicated that “[t]he 1982 building permit was finalized with the building 10 inches<sup>1</sup> into the 12 foot side property set-back requirement.” The Statement further indicates that between 2016 and 2017, the County used the 2016 survey to issue the Petitioner six (6) permits. The Petitioner asserts in her Statement that the discrepancy between the side setback required and the side setback provided is invisible to the eye. She notes that she has installed a six-foot board-on-board fence along that side lot line (i.e. the southern side lot line) to create additional privacy between her property and the abutting property to the south. See Exhibits 3 and 7.

The Petitioner's Statement notes that “[e]xpanding homes in a subdivision built in 1964 by enclosing a carport and adding a room is a traditional development pattern of older neighborhoods,” and that she is not responsible for the construction of this addition, which was built by a previous owner. The Statement notes that “[g]ranteeing the variance request for the building addition already constructed and approved with a permit for the 10 inch mistake by a previous owner is necessary to avoid the difficulty and severe hardship of taking the building apart and putting it back together again.” It then lists a number of difficulties that would be attendant in removing the 10-inch encroachment and rebuilding the addition in a compliant location, noting that the addition has been in place for 37 years. The Statement states that the grant of the variance to allow this addition to remain where it has been for almost four decades will not be adverse to the use and enjoyment of neighboring property owners, and suggests that construction to correct the issue would be more disruptive. See Exhibit 3.

3. The Statement indicates that the existing 10' x 10' shed on the Petitioner's property was built by a previous owner, ten to twenty years ago, without a permit. The Statement notes that granting the requested variance would allow the shed to stay in its existing location, and asserts that the existing location is the best location for the shed for the following reasons:

- a. The back of the lot has a 25' wide slope & drainage easement.
- b. There is an existing child swingset and child fort in the S/E corner of the back yard.
- c. There is an existing pigeon coop/garden table in the NW corner of the back yard.
- d. The shed would block windows if put against the back of the house.
- e. If all setback, easement and window blocking were prevented, the shed would have to be in the middle of the rear yard.
- f. The lot next door has a taller, bigger, wider accessory structure a few inches from the property line making Petitioner's shed invisible near the same property line from the neighboring property.

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<sup>1</sup> At the hearing, the Petitioner clarified that the addition was actually constructed 0.8 feet (9.6 inches) into the setback, not 10 inches.

- g. Ladders are stored on top of the neighboring shed making a sidewalk near the fence a poor location.
- h. The Petitioner's shed provides privacy from the front yard.
- i. The Petitioner's shed provides noise reduction from Shady Grove Road and the back yard to the neighboring lots and Park Mill Drive.
- j. The back and side yard is enclosed with a 6' board on board fence up to the front of the house.
- k. The topography of the lot going up hill and down hill from the street makes the shed difficult to see from the street.
- l. The narrow area between the house and the 6' fence, surrounded by trees makes the visibility of the shed the only possible if standing by that narrow area.

See Exhibit 3. The Statement indicates the value of the shed is approximately \$4,000.00, and that it is probably less expensive to destroy the shed than to relocate it. The Statement notes that the visibility of the shed is minimized because of the six (6) foot board-on-board fencing, and because the shed is located by a neighboring shed. The Statement also states that "[n]either abutting neighbor have a shed or accessory permit searchable using DEP's on-line records. There are no on-line records of any property having a shed or accessory permit on Park Mill Drive." See Exhibit 3. Finally, with respect to the impact of the shed on the use and enjoyment of neighboring properties, the Statement notes that:

The shed/accessory structure has been on the property for an estimated 10 years old. The visibility of the shed is minor and only barely visible when not on Petitioner's property. Moving the shed another 7 feet to the right would require moving the fence and gate to the back yard. Moving the gate to the back yard, the neighbor's shed with roofing materials on top of, behind and sticking over the fence would have a negative effect on the Petitioner's property.

4, The record contains three (3) letters of opposition: one from Bonnie Lloyd (Exhibit 10), one from Beverly Lloyd (Exhibit 11), and one from Anne Gregorski (Exhibit 14).

The letter from Bonnie Lloyd indicates that she strongly objects to the Petitioner's request for variances. Ms. Lloyd indicates that she is a long-time resident of Mill Creek Towne, and that the Petitioner's property "has been this way for decades, and should be allowed to remain this way without official variance approval." Her letter goes on to state that the property currently houses a large family day care, and that the Petitioner "wishes to expand parking, create a circular drive to facilitate drop-off and pick-up, and expand the footprint of the home to accommodate the day care, which will inflict chaos on our residential neighborhood." She notes that the County had previously denied the Petitioner a conditional use for a "Day Care Facility (30 children)" at this location, and asserts that this variance application is "an attempt at an end-around [of] some of the objections cited by the Office of Zoning & Administrative Hearing in the rejection of CU 17-14."<sup>2</sup> See Exhibit 10.

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<sup>2</sup> The Hearing Examiner's Report and Decision in Case No. CU 17-14 is in the record at Exhibit 12.

The record also contains a letter of opposition from Beverly Lloyd, whose property abuts the subject property to the south. Ms. Lloyd's letter states that she, too, strongly objects to this request for variance relief. It asserts that the Petitioner could have had the property surveyed prior to her purchase, and that "[a]nyone with even limited knowledge of zoning would have realized that a shed essentially located on the property line, would not conform to the zoning code." Ms. Lloyd's letter goes on to claim that the Petitioner is experiencing no hardship "since no one is asking her to remove or relocate the features that do not comply," and that her interest in seeking the requested variances related to the operation of a day care on the property. In closing, the letter conveys Ms. Lloyd's belief that "if this variance is granted, [the Petitioner] would quickly want off street parking that would be next to my property line, disrupting the drainage towards my house, and creating a commercial parking lot next to me," and implores the Board not to allow the Petitioner "to obtain a residential variance for a business purpose." See Exhibit 11.

Finally, the record contains a lengthy letter of opposition, with attachments, from Anne Gregorski. Ms. Gregorski's letter notes that granting the requested variances "will be adverse to the use and enjoyment of not only abutting and confronting properties, but the neighborhood," and indicates that "[i]t is clear" that the Petitioner "intends to submit another Conditional Use Application if she is granted these variances." Her letter asserts that "[a] variance on the south side of the house is needed for parking." It goes on to state that the Petitioner had excavated the side of her yard for parking without being granted a conditional use or variance, and provides a photograph depicting the excavation. Her letter cites the Hearing Examiner's Report and Decision in conditional use Case No. 17-14, at pages 19-20, as indicating that the Petitioner's proposed parking plans did not meet the required setback and would "unfairly intrude on her southern neighbor's (i.e. Beverly Lloyd's) peaceful enjoyment of her property ...." See Exhibits 12 and 14.

Regarding the Petitioner's request for a variance to allow her shed to remain in its current location, Ms. Gregorski's letter states that contrary to the Petitioner's claim that the shed would be difficult to move and the current location is the best place for the shed, "on Day 2 of the Conditional Use Administrative Hearing for CU 17-14 (page 376 of the transcript of record), she stated that the shed is on 'skid things,' and intimated that it could easily be moved. She had no problem getting large equipment to excavate the side of her yard for her commercial enterprise." Ms. Gregorski asserts in her letter that the shed "should be in the dirt where the playground equipment is located." She closes her letter by noting that she opposes the petition because "granting the two variances will interfere with the peaceful use and enjoyment of our property." See Exhibit 14.

#### The Existing House

5. At the hearing, pursuant to a request from the Board, Petitioner Robin Rice testified first about the requested variance for the existing house. Ms. Rice testified that she purchased the subject property in 2016, and that the encroaching addition to the house existed at that time, having been constructed by a previous owner in 1982, pursuant to a permit that was issued and finalized by Montgomery County. She testified that these

circumstances constitute an extraordinary condition specific to this property. She further testified that the existing (encroaching) addition constitutes an existing legal nonconforming use, and referred the Board to MD Code, Courts and Judicial Proceedings, Section 5-114, stating that pursuant to that section, the 1982 building permit should be considered valid. See Exhibit 16.

Ms. Rice testified, with respect to the variance needed for the existing house, that the 9.6-inch encroachment is not noticeable, and that the variance to allow the encroachment is not a substantial request and would not impair the intent and integrity of the Master Plan. She testified that the requested 0.80 foot variance is the minimum needed to overcome the practical difficulties that would be associated with demolishing and rebuilding this existing structure, which she emphasized was built with Montgomery County's approval. Regarding the impact of the grant of this variance on abutting and confronting property owners, Ms. Rice stated that granting the variance for the existing addition will allow it to remain where it has been for 37 years, and opined that the disruption and noise that would be caused if she has to rebuild this portion of her home would be more disruptive to her neighbors than allowing the addition to stand. Ms. Rice testified that if the variance is not granted, she will have to disclose that the existing home does not meet the required setbacks when she sells this home, and that this will de-value the property.

Ms. Rice testified that she purchased this house as a foreclosure, and took it "as is." She testified while she knew that the 1982 addition had been constructed with a building permit, she was unaware that it violated the required side lot line setback. She stated that although the County had a copy of the site plan at the time that the building permit was issued, the County no longer has that document. She testified that she first became aware of the encroachment by the existing house when she ordered a new survey in connection with an application for a fence permit, and that in connection with her conditional use application, the Hearing Examiner told her that no conditional uses could be granted for the subject property until this issue was addressed. Ms. Rice then testified that because of the handicapped bathroom in the addition, it would be good to market the subject property as having accessory apartment or eldercare potential.

In response to a question from Ms. Gregorski, asking Ms. Rice if she would be putting parking on the south side of her house if the variance were granted, Ms. Rice testified that parking was not relevant to the grant of this variance.<sup>3</sup>

6. Ms. Gregorski testified in opposition to the requested variance for the existing house. She stated that Ms. Rice was unable to prove that the parking she proposed for the (now-denied) conditional use was not adverse to the use and enjoyment by Ms. Beverly Lloyd of her property, and she asserted that the grant of a variance would allow this parking. She stated that if Ms. Rice is granted this variance, she would apply for a new conditional use, and that the community was seeking to avoid that result.

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<sup>3</sup> The Board clarified that the variance being discussed was for the existing house, not for parking.

7. Tom Johnson, who property abuts the subject property to the north, testified that his concern was also about a future conditional use application, and he asked if the Board could "rule that out."

8. Beverly Lloyd, whose property abuts the subject property to the south, indicated that she had nothing to add.

#### The Existing Shed

9. Petitioner Robin Rice next testified about the variance needed for the existing shed. She reiterated that she had purchased the subject property in 2016, and that the shed existed on the property prior to her purchase, estimating that it had been there for about ten years. She testified that Bonnie Lloyd's letter references the existing house and shed, and states that the subject property "has been this way for decades," which she testified buttresses her assertion that the shed predates her ownership of the property. See Exhibit 10. Ms. Rice testified that the shed is located near her neighbor's shed, and that because of that shed and her fence, it is barely visible when not on the subject property. She testified that moving the shed will negatively impact her because of her neighbor's shed and the ladders stored on that shed. Ms. Rice estimated the value of the shed at approximately \$4,000, and testified that at 10 feet by 10 feet, it was too heavy to move without the assistance of a tractor. She testified that a tractor could access the shed by going around the house on the right, but that that would disturb the grass; she testified that bringing the tractor around the left side of the house would require the removal of trees. Finally, she testified that even if she was able to get a tractor behind her house to move the shed, there was no guarantee that it would hold together during the move.

Ms. Rice testified that she was unsure which setbacks would apply to the relocation of this shed, and recounted a litany of possibilities for the Board based on various provisions in the Zoning Ordinance. She testified that there is a 25-foot wide slope and drainage easement across the "rear" of her property (i.e. along the Shady Grove Road side) where she did not believe the shed could be located. She testified that her property was a "through lot," which caused her to question whether the shed would be subject to two front lot line setbacks. She testified that in its current location, the shed blocks the view of the ladders on her neighbor's shed; she noted that the shed is inspected every year in connection with the child care operating on the property. Ms. Rice testified that if she were forced to relocate the shed to the middle of her yard, it would obscure the view of the children and thus would pose a compliance problem with the State for the existing day care operation. Finally, she testified that perhaps she could build an attached garage on the left (north) side of the existing house in lieu of the shed.

In response to a Board question, Ms. Rice testified that the shed was built without a permit, and that based on her research, neither of her neighbors have permits for their sheds. See Exhibit 7.

10. Anne Gregorski testified that the slope and drainage easement that Ms. Rice referenced extended across all of the neighboring properties bordering on Shady Grove Road. Regarding the ease with which the existing shed could be moved, Ms. Gregorski highlighted testimony from the conditional use hearing in which Ms. Rice indicated that the shed was on “skid things” and could be moved. See Exhibit 14.

11. Beverly Lloyd testified that she lived on her property before the shed was built on the subject property. She testified that the shed was constructed to house homing pigeons, and that one night a fox got in and killed all of the birds. Ms. Rice then interjected that the accessory structure about which Ms. Lloyd was testifying was not the “shed” for which she was seeking a variance, noting that there is a pigeon coop at the rear of the subject property.

12. Tom Johnson testified that he was not sure what his ladders had to do with this matter; he testified that they were stored horizontally and did not overhang the property line. He further testified that his shed blocks the view of the Petitioner’s shed, and that her shed blocks the view of his shed.

## **FINDINGS OF THE BOARD**

Section 59-7.3.2.E of the Montgomery County Zoning Ordinance, “Necessary Findings,” provides that in order to grant a variance, the Board of Appeals must find that:

(1) denying the variance would result in no reasonable use of the property; or

(2) each of the following apply:

a. one or more of the following unusual or extraordinary situations or conditions exist:

i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

b. the special circumstances or conditions are not the result of actions by the applicant;

c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;

- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The Board can grant a variance if the Petitioner satisfies either Section 59-7.3.2.E.1 or Section 59-7.3.2.E.2 of the Zoning Ordinance. The Board notes that Section 59-7.3.2.E.2 sets forth a multi-part, conjunctive test for the grant of a variance. For this reason, the Board cannot grant a variance if an applicant proceeding under that Section fails to meet any of the required elements. In addition, Section 59-7.1.1 of the Zoning Ordinance provides that the applicant has the burden of production and the burden of proof by a preponderance of the evidence on all questions of fact.

Based on the binding testimony and evidence of record, the Board finds that the variance of 0.80 feet for the existing house can be granted, but that the variance of eight (8) feet for the existing shed must be denied. As was the case with the testimony, the Board's analysis of these two variances is set forth separately, below.

#### The Existing House

The Board notes, in this case, that the Petitioner did not argue that denying the requested 0.80 foot side lot line variance to allow the existing house to remain in its existing location would result in no reasonable use of her property, as would be required for the grant of a variance under Section 59-7.3.2.E.1 of the Zoning Ordinance. Thus the Board must analyze the Petitioner's variance request for the existing house under Section 59-7.3.2.E.2. The Board finds that the requested variance for the existing house complies with the applicable standards and requirements set forth in Section 59-7.3.2.E.2 of the Zoning Ordinance, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the addition to the Petitioner's house, which was constructed in 1982 pursuant to a building permit issued and finalized by the County's Department of Permitting Services, and which encroaches on the required side lot line setback, is a legal nonconforming structure. Thus the Board finds that this application, which requests that this existing structure be permitted to remain in its current location, satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*



The Board finds that the Petitioner purchased the subject property in 2013, and therefore is not responsible for the location of the 1982 addition to this house.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of Ms. Rice and the Statement in the record at Exhibit 3, that without the grant of the requested variance, the only way for the Petitioner to achieve full compliance with the Zoning Ordinance would be to remove a portion of the existing addition. The Board further finds that removal of the encroaching portion of this addition, which extends less than 10 inches into the setback and was constructed 37 years ago with County-issued permits, would render conformance with the Zoning Ordinance unnecessarily burdensome and do substantial injustice to the Petitioner, thus constituting a practical difficulty, and that the grant of the requested variance, necessary to allow this structure to remain in place, is the minimum necessary to overcome this practical difficulty.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the requested variance will allow the continued residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the applicable master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Despite the testimony of persons opposed to the grant of this variance, most of which focused on potential future use of the subject property, whether for parking or a larger child care facility, the Board can find no evidence that granting the requested variance, which does not permit new construction or activity, but rather allows the existing addition to this house to remain where it has been for decades, will adversely affect the use and enjoyment of abutting or confronting properties. Thus the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Based on the foregoing, the Board finds that the 0.80 foot variance from the right side lot line setback, needed for the existing house, can be granted.

#### The Existing Shed

The Board finds that the Petitioner did not argue that denying the requested eight (8) foot side lot line variance to allow her shed to remain in its existing location would result in no reasonable use of her property, as would be required for the grant of a variance under Section 59-7.3.2.E.1 of the Zoning Ordinance. Thus the Board must analyze the Petitioner's variance request for the existing shed under Section 59-7.3.2.E.2. Although the Petitioner attempted to address the standards in Section 59-7.3.2.E.2, the

Board finds that the requested variance fails to meet Section 59-7.3.2.E.2.a, as follows, and accordingly must be denied.

*Section 59-7.3.2.E.2.a.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Petitioner listed several reasons, all of which are recounted in paragraph 3 under the heading "Evidence Presented," above, that she believes her shed should be allowed to remain in its current location. Many of these factors involve the lack of the shed's visibility in its current location. See paragraphs 3(f), (j), (k), and (l). Others cite to the fact that in its present location, the shed promotes privacy and blocks noise. See paragraphs 3(h) and (i). Still others cite the existence of other structures/obstructions on the subject property, and a 25-foot wide slope and drainage easement across the "back" yard. See paragraphs 3(a), (b), (c), and (d). Finally, while the Petitioner asserts in paragraph 3(g) that "ladders are stored on top of the neighboring shed making a sidewalk near the fence a poor location," it is not clear what this has to do with meeting the variance standards, and this statement is contradicted by the testimony of that neighbor, who stated that his ladders do not hang over the shared property line.

Although the Petitioner's Statement indicates that moving the shed to the right (i.e. away from the left (north) side lot line) to comply with the required setback would entail "moving the fence and gate to the back yard," and that this would have a negative effect on her property due to the presence of roofing materials on top of and behind her neighbor's shed, and sticking over the fence between their yards, she does not say that the shed cannot be relocated. Indeed, paragraph 3(e) under "Evidence Presented" seems to indicate that the shed can be relocated, indicating that if all else failed, the shed could be located in the middle of the yard. This is further supported by the Petitioner's own testimony that contemplates the use of a tractor to move the shed, and by Ms. Gregorski's highlighting of the Petitioner's testimony during the conditional use hearing, in which she indicated that the shed is on skids and could be moved.

The Petitioner has not asserted that her property has exceptional narrowness, shallowness, or topographical conditions, and the Zoning Vicinity Map indicates that it is similar in size and shape to neighboring lots on the west side of Park Mill Drive. See Exhibit 8. The subject property is rectangular in shape, and the Board finds that there is room on the subject property to locate the shed in accordance with the left side lot line setback despite the presence of the slope and drainage easement across the functional rear of this property. See Exhibit 4(a). Finally, while the Board understands the Petitioner's desire to keep her shed in its current location,<sup>4</sup> the Board finds that the reasons given by the Petitioner for allowing the shed to remain in its current location, while logical, do not go to the circumstances that would make a property "unique" for the

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<sup>4</sup> The Board notes the holding of the Court of Special Appeals of Maryland in *Montgomery County v. Rotwein* that a variance applicant must show more than simply that proposed construction would be suitable, or desirable, or could do no harm, or would be convenient or profitable to its owner. See *Rotwein*, 169 Md. App. 716, 730, 906 A. 2d 959, 967 (2006).

purpose of granting a variance under Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.<sup>5</sup> Accordingly, the Board cannot find that the variance requested meets this Section of the Zoning Ordinance.

*Section 59-7.3.2.E.2.a.ii – the proposed development uses an existing legal nonconforming property or structure;*

*Section 59-7.3.2.E.2.a.iii – the proposed development contains environmentally sensitive features or buffers;*

*Section 59-7.3.2.E.2.a.iv – the proposed development contains a historically significant property or structure; or*

*Section 59-7.3.2.E.2.a.v – the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds that the Petitioner has not presented any evidence to support a finding that the existing shed is a nonconforming structure, having admitted that the shed was constructed without a building permit and that it is only 10, possibly 20, years old. The Board further finds that the Petitioner has not asserted that the subject property contains environmentally sensitive features or buffers, or that it is historically significant. Finally, the Board finds that while the Petitioner has indicated that both of her neighbors have sheds, she has not provided the Board with evidence to support a finding that her shed substantially conforms with the established historic or traditional development pattern of her street or neighborhood. Accordingly, the Board finds that the variance does not meet Sections 59-7.3.2.E.2.a.ii-v of the Zoning Ordinance.

Based on the foregoing, the Board finds that the requested eight (8) foot variance for the existing shed cannot be granted under Section 59-7.3.2.E.2.a of the Zoning Ordinance, and must be denied. Because the variance test in Section 59-7.3.2.E.2 is conjunctive, the Board does not address the remaining elements of the test set forth in Sections 59-7.3.2.E.2.b through e of the Zoning Ordinance.

Accordingly, based on the findings made under the heading “The Existing House,” on a motion by John H. Pentecost, Chair, seconded by Jon W. Cook, with Stanley B. Boyd, Vice Chair, and Katherine Freeman in agreement, and with Bruce Goldensohn

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<sup>5</sup> *Cromwell v. Ward*, 102 Md. App. 691, 710, 651 A.2d 424, 433-434 (quoting *North v. St. Mary's County*, 99 Md. at 512, 638 A.2d 1175), describes uniqueness as follows:

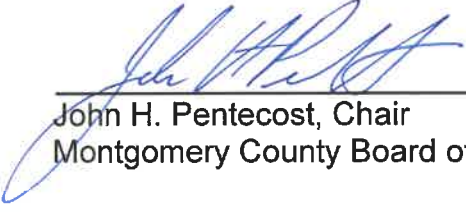
In the zoning context, the “unique” aspect of a variance requirement does not refer to the extent of the improvements upon the property, or upon neighboring property. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

necessarily absent, the requested variance for the existing house is **granted**, subject to the following condition:

1. Petitioner shall be bound by her testimony and by the exhibits of record, to the extent that such testimony and evidence are mentioned in this Opinion.

In addition, based on the findings made under the heading "The Existing Shed," on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Katherine Freeman and Jon W. Cook in agreement, and with Bruce Goldensohn necessarily absent, the requested variance for the existing shed is **denied**, and the Board adopts the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 6th day of June, 2019.



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Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.